

SENATE BILL NO. 456

INTRODUCED BY LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A LOCAL GOVERNING BODY FROM INCLUDING BUILDING REGULATIONS IN SUBDIVISION REGULATIONS; AND AMENDING SECTION 76-3-504, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents -- prohibition. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(b) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(d) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(e) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(f) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(iv) the location and installation of utilities;

(g) provide procedures for the administration of the park and open-space requirements of this chapter;

(h) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the

1 failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing
2 body.

3 (i) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
4 to:

5 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
6 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
7 a legal right to the water and reserve and sever any remaining surface water rights from the land;

8 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
9 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
10 administered through a single entity that specifies administration and the rights and responsibilities of
11 landowners within the subdivision who have a legal right and access to the water; or

12 (iii) reserve and sever all surface water rights from the land;

13 (j) except as provided in this subsection, require the subdivider to establish ditch easements in the
14 subdivision that are in locations of appropriate topographic characteristics and sufficient width, to allow the
15 physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery
16 of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or
17 permit of an irrigation district or other private or public entity formed to provide for the use of the water right on
18 the subdivision lots; are a sufficient distance from the centerline of the ditch to allow for construction, repair,
19 maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation
20 other than grass within the ditch easement without the written permission of the ditch owner. Establishment of
21 easements pursuant to this subsection (1)(j) is not required if:

22 (i) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
23 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
24 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;
25 or

26 (ii) the water rights are removed or the process has been initiated to remove the water rights from the
27 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
28 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
29 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
30 document that intent, when applicable, in agreements and legal documents for related sales transactions.

1 (k) require the subdivider, unless otherwise provided for under separate written agreement or filed
2 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
3 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision
4 to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
5 historic and legal rights;

6 (l) require the subdivider to describe, dimension, and show utility easements in the subdivision on the
7 final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical
8 placement and unobstructed maintenance of utility facilities for the provision of utility services within the
9 subdivision.

10 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted
11 under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster
12 development.

13 (3) Subdivision NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1)(D), SUBDIVISION regulations adopted
14 under this chapter may not include building regulations, as defined in 50-60-101."

15 - END -